

## **Mortgage Foreclosure Trial Court Assistance Project – Components, Policies, and Procedures**

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### **Introduction and Background:**

Concerned about the record number of foreclosures in Indiana, and troubled by instances of unresponsiveness from some lenders and servicing agents, the Indiana General Assembly passed Senate Enrolled Act 492, now codified at I.C. 32-30-10.5 *et seq.* Two key portions of the new statute are a \$50 filing fee for new mortgage foreclosure actions filed after July 1, 2009 and the requirement for settlement conferences between the borrower and an individual representing the lender with settlement authority.

But according to the Indiana Housing and Community Development Authority (IHCDA), of the approximately 300 conferences which occurred between July and December 2009, most were unsuccessful because one or both parties were unprepared. Homeowners failed to bring the necessary documents, or had not prepared a budget and were unaware of the maximum monthly amount they were able to pay; lenders sent entry-level employees who had no real authority to agree to any mortgage changes. A clear need existed for more organization between the parties – there was no standard process coordinating the local pro bono commissions, courts, lenders, and homeowners.

After discussing the situation with a number of trial judges, the Division of State Court Administration (STAD) has partnered with the IHCDA to create a system for coordinating all settlement conferences on a county or district-wide basis. This program was launched on a pilot basis in April 2010 in Allen, Marion, and St. Joseph Counties, and has now expanded to 20 counties across the state.

The basic structure of the project is this: A project manager (PM) engaged by STAD oversees local logistical coordinators (LCs) and/or facilitators, who coordinate with pro bono attorneys, homeowners, and lenders to schedule and take part in settlement conferences. These roles, and their duties, are explained in greater detail below.

### **Members and Roles:**

#### **Local Logistical Coordinators (“LCs”):**

The LCs are the primary point of contact between the Project Manager/Supreme Court and the local courts. The LC’s duties include: sending court notices to the borrower; scheduling preliminary telephone conferences between the borrower, lender, and facilitator; scheduling settlement conferences; and ensuring that the logistical requirements of the conference area are met (e.g. telephone and fax services).

LCs sign an employment contract with the Supreme Court, Division of State Court Administration (“STAD”), but are selected mutually between STAD and the local courts. LCs are paid a flat fee of \$15.00 for each telephone conference scheduled and \$15.00 for each settlement conference scheduled.

#### **Facilitators:**

Facilitators are responsible for bringing the borrower and lender together, determining what each party needs in order to make an informed decision, and helping the parties come to a mutually-satisfactory

agreement, if at all possible. The Facilitator is to be an attorney with a background in mediation and mortgage foreclosure issues. A judicial officer (commissioner, magistrate, senior judge assigned to the court) can fulfill this role, but could not be compensated under this project's funding. However, a senior judge who is not being compensated under the Senior Judge statute would be permitted to serve as facilitator and receive payment from STAD, but would not receive "credit" toward the required 30 days or be paid under the Senior Judge statute.

Facilitators sign an employment contract with STAD, although they serve largely at the discretion of the trial court. Facilitators are paid \$10.00 for each preliminary telephone conference and \$75.00 for each settlement conferences at which he or she serves as facilitator. If a follow-up conference is necessary, the facilitator may choose to conduct this conference for an additional \$50.00 fee.

A list of foreclosure-trained mediators is available at the Commission for CLE website, <http://www.in.gov/judiciary/cle/>.

### **Basic Procedures and Best Practices:**

The procedures for each county vary depending on the presence of a logistical coordinator and facilitators or facilitators only. All forms, orders, and notices referenced can be found at <http://www.in.gov/judiciary/admin/2365.htm>.

#### **In counties utilizing a logistical coordinator and facilitators:**

- 1) For each new mortgage foreclosure filing, the Logistical Coordinator (LC) issues a single-sheet Notice to the borrower informing him or her of the right to request a settlement conference.
- 2) If the borrower contacts the LC or court to request a settlement conference, the LC prepares an Order for Telephone Conference, requiring the borrower, lender, and facilitator to call in to the court on a certain date and time.
- 3) At the preliminary telephone conference, the facilitator will gather information on the type of loan, the borrower's circumstances, any previous modifications, and what financial documents the lender needs in order to evaluate the borrower for loss mitigation programs. The court then issues an Order for Settlement Conference including the time and date of the settlement conference and the documents to be provided prior to the conference. If the borrower fails to appear at the preliminary telephone conference, or does not request or qualify for a settlement conference, the court will issue an Order After Telephone Conference setting forth these facts.
- 4) At the settlement conference, the facilitator will assist the parties in discussing any potential settlements, further documents needed, changes in circumstances, and other issues. If follow-up work is needed, the facilitator is to indicate this in his or her report to the court. The facilitator shall let the court know the result of the settlement conference and make a recommendation on how to proceed.
- 5) The facilitator shall send to the Division of State Court Administration an invoice for services rendered. This invoice (available at <http://www.in.gov/judiciary/admin/2365.htm>) also seeks data on settlement conferences conducted.

#### **In counties utilizing facilitators only:**

- 1) For each new mortgage foreclosure filing, the facilitator or a member of the court staff issues a single-sheet Notice to the borrower informing him or her of the right to request a settlement conference.
- 2) If the borrower contacts the facilitator or court to request a settlement conference, the facilitator prepares an Order for Telephone Conference, requiring the borrower and lender to call in to the court on a certain date and time.
- 3) At the preliminary telephone conference, the facilitator will gather information on the type of loan, the borrower's circumstances, any previous modifications, and what financial documents the lender needs in order to evaluate the borrower for loss mitigation programs. The court then issues an Order for Settlement Conference including the time and date of the settlement conference and the documents to be provided prior to the conference. If the borrower fails to appear at the preliminary telephone conference, or does not request or qualify for a settlement conference, the court will issue an Order After Telephone Conference setting forth these facts.
- 4) At the settlement conference, the facilitator will assist the parties in discussing any potential settlements, further documents needed, changes in circumstances, and other issues. If follow-up work is needed, the facilitator is to indicate this in his or her report to the court. The facilitator shall let the court know the result of the settlement conference and make a recommendation on how to proceed.
- 5) The facilitator shall send to the Division of State Court Administration an invoice for services rendered. This invoice (available at <http://www.in.gov/judiciary/admin/2365.htm>) also seeks data on settlement conferences conducted.

#### **Data Collection and Payment:**

The MFCAP recently moved to a new payment processing system. All facilitators and logistical coordinators are to use the Invoice Template (available at <http://www.in.gov/judiciary/admin/2365.htm>) to submit their invoices for telephone and settlement conferences conducted. This invoice also has a data collection component (tab 4) – the facilitator or logistical coordinator is to record all telephone and settlement conferences conducted, and the result.

This document is designed to be a guideline for development of settlement conference procedures and is not “set in stone.” Changes and innovations and suggestions based on local legal culture and custom are welcome.

#### **Any questions, comments, or suggestions may be directed to:**

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The Mortgage Foreclosure Task Force website is located at <http://www.in.gov/judiciary/admin/2416.htm>.

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